CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 1939.

MASSACHUSETTS *v.* MISSOURI ET AL.

No. —, Original. Argued October 9, 1939.—Decided November 6, 1939.

1. To constitute a controversy between two States, within the original jurisdiction of this Court, it must appear that the complaining State has suffered a wrong through the action of the other State, furnishing ground for judicial redress, or is asserting a right against the other State which is susceptible of judicial enforcement according to the accepted principles of the common law or equity systems of jurisprudence. P. 15.
2. A bill by one State against another State and citizens of the other, which alleges that the plaintiff has assessed a tax on the transfer by death of the estate of one of its own citizens, the satisfaction of which depends upon resort to intangible assets of the decedent consisting of securities held by the individual defendants, as trustees, in the defendant State, and which alleges that the defendant State claims and will exercise a right to levy a like tax upon the transfer of this intangible property, and which prays to have the respective rights of the two States adjudicated, and for general relief, but which shows that the property is sufficient to answer the claims of both States and that the claims are not mutually exclusive but independent so that each State may constitutionally press its claim without conflict in point of law or fact with the decision of the other,—does not present a justiciable controversy between the two States. *Texas* v. *Florida*, 306 U. S. 398, distinguished. *Id.*
3. State statutes purporting to exempt from local transfer tax intangible assets of decedents who, at death, were citizens of other States which grant reciprocal exemptions, create no enforceable obligation between the States enacting them. P. 16.

4. A State may not invoke the original jurisdiction of this Court to enforce the individual rights of its citizens. P. 17.
5. Federal jurisdiction to render a declaratory judgment depends on the existence of a controversy in the constitutional sense. *Id.*
6. A State can not be brought into court by making its citizens parties to a suit not otherwise maintainable against the State. *Id.*
7. An action by a State to recover money from citizens of another State will not be entertained by the Court in the absence of facts showing that resort to the original jurisdiction is necessary for the protection of the plaintiff State. P. 18.

   In the present instance, it does not appear that Massachusetts is without a proper and adequate remedy in the Missouri courts or the federal District Court in Missouri. P. 19.
8. Clause 2 of § 2 of Article III of the Constitution merely distributes the jurisdiction conferred by clause 1. *Id.*
9. The orginal jurisdiction of this Court, in cases where a State is a party, refers to those cases in which, according to the grant of power made in Art. III, § 2, cl. 1, jurisdiction might be exercised in consequence of the character of the party, and an original suit might be instituted in any of the federal courts. *Cohens* v. *Virginia,* 6 Wheat. 264. *Id.*
10. The objection that the courts in one State will not entertain a suit to recover taxes due to another or upon a judgment for such taxes, goes not to the jurisdiction but to the merits, and raises a question which the district courts are competent to decide. P. 20.

Motion for leave, denied.

ON MOTION for leave to file an original bill in this Court and the return to an order to show cause.

Mr. Edward O. Proctor, Assistant Attorney General of Massachusetts, with whom *Mr. Paul A. Dever,* Attorney General, was on the brief, for complainant.

Under *Graves* v. *Elliott,* 307 U. S. 383, decedent's right to revoke had the attribute of property, and control of her person and estate at the place of her domicil afforded constitutional basis for imposition of the tax.

Under that case and *Curry* v. *McCanless,* 307 U. S. 357, Missouri also can tax the transfer, though whether its

statutes exercise that power with respect to the present trusts, in view of the reciprocity provision of the statute, is another question. As the Massachusetts tax is imposed upon the trustees, who are residents of Missouri, Massachusetts can enforce the tax only by recourse to the Missouri or federal courts. The trustees deny their liability to pay, on the ground that Massachusetts has no jurisdiction to impose it. There exists, therefore, a controversy between that State and citizens of Missouri.

The purpose of vesting in the courts of the United States jurisdiction of suits by one State against the citizens of another "was to enable such controversies to be determined by a national tribunal, and thereby to avoid the partiality, or suspicion of partiality, which might exist if the plaintiff State were compelled to resort to the courts of the State of which the defendants were citizens." *Massachusetts* v. *Mellon,* 262 U. S. 447, 480, 481; *Wisconsin* v. *Pelican Ins. Co.,* 127 U. S. 265, 289; *Chisholm* v. *Georgia,* 2 Dall. 419, 475; Story on the Constitution, §§ 1638, 1682. And if the facts present such a case, the Court may not deny jurisdiction because numerous similar cases might "be brought within its cognizance." *Minnesota* v. *Hitchcock,* 185 U. S. 373.

A suit against an individual to collect a tax clearly presents a justiciable controversy determinable "according to accepted doctrines of the common law or equity systems of jurisprudence." *United States* v. *Chamberlin,* 219 U. S. 250; *Milwaukee County* v. *M. E. White Co.,* 296 U. S. 268, 271; *Meredith* v. *United States,* 13 Pet. 486; *Dollar Savings Bank* v. *United States,* 19 Wall. 227; *United States* v. *Philadelphia & Reading R. Co.,* 123 U. S. 113.

A judgment for a tax is one which is entitled to full faith and credit under the Constitution. *Milwaukee County* v. *M. E. White Co.,* 296 U. S. 268.

The Massachusetts inheritance tax is a statutory liability quasi contractual in nature, subject to enforcement by suit. The rule, adopted in some jurisdictions but denied in others, that the courts of one State will not enforce the revenue laws of another State, has been severely criticized (29 Col. L. R. 782; 48 Harv. L. R. 828) and its validity is an open question in this Court. *Milwaukee County* v. *M. E. White Co.*, 296 U. S. 268, 275; *Moore* v. *Mitchell*, 281 U. S. 18, 24.

The rule of *Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 265, should not be extended to a suit for enforcement of revenue laws. *Milwaukee County* v. *M. E. White Co.*, *supra*.

There is presented a controversy between Massachusetts and Missouri. In view of recent decisions (*Curry* v. *McCanless*, *supra*; *Graves* v. *Elliott*, *supra*; *Worcester County Co.* v. *Riley*, 302 U. S. 292, 299; *New Jersey* v. *Pennsylvania*, 287 U. S. 580) the States, having surrendered their rights to make treaties *inter sese*, must find their only remedy against double taxation in reciprocal legislation. *First National Bank of Boston* v. *Maine*, 284 U. S. 312, 334; *Kidd* v. *Alabama*, 188 U. S. 730, 732. Both Massachusetts and Missouri have resorted to this expedient. Massachusetts and its residents, therefore, are entitled to the immunity offered by the Missouri statute.

If the evils of multiple taxation are to be solved by reciprocal legislation of the States, as this Court has itself suggested, it is essential that there be a forum where recalcitrant States may be compelled to observe the reciprocity their legislatures have provided. The Supreme Court is the only available forum.

If the Court has jurisdiction upon either ground but not the other, the jurisdiction is not lost because of the joinder of parties not necessary to such jurisdiction.

Mr. Harry W. Kroeger, with whom *Mr. Daniel N. Kirby* was on the brief, for St. Louis Union Trust Co., Trustee, et al., respondents.

The controversies in this case are justiciable because they are of a civil nature and arise between States of the Union and between a State and citizens of another State. They exist notwithstanding the absence of constitutional restraints on double taxation. Distinguishing *Curry* v. *McCanless,* 307 U. S. 357; *Graves* v. *Elliott,* 307 U. S. 383. Because of the facts in this case, and the reciprocal exemption contained in the law of Missouri, there can here be only one tax, if in truth there can be any tax at all. In such a situation a controversy arises appropriately to be decided by a court upon an analogy to interpleader under the principle recently decided by this Court in *Texas* v. *Florida,* 306 U. S. 398.

Controversies between the States of Massachusetts and Missouri arise because each denies the right of the other to tax. A controversy arises from the assertion by Massachusetts of the validity of its tax laws in Missouri. Throughout the Eighteenth and Nineteenth Centuries English courts have announced the doctrine in *dicta* that no nation will take notice of the revenue laws of another. In America the doctrine has been followed and applied in *Ludlow* v. *Van Rensselaer,* 1 Johnson 94; *Maryland* v. *Turner,* 132 N. Y. S. 173; *Colorado* v. *Harbeck,* 232 N. Y. 71; *New York Trust Co.* v. *Island Oil & Transport Corp.,* 11 F. 2d 698; *Moore* v. *Mitchell,* 30 F. 2d 600; 281 U. S. 18.

This Court has found it unnecessary to decide whether a State might have extraterritorial enforcement of its revenue laws in an original action outside the taxing State, as distinguished from a suit on a judgment obtained in the taxing State on personal service. *Moore* v. *Mitchell, supra; Milwaukee County* v. *M. E. White*

Co., 296 U. S. 268. The issues, as suggested by *Colorado* v. *Harbeck*, 232 N. Y. 71, and *Moore* v. *Mitchell*, *supra*, go deeper than objections to extraterritorial collection. They involve questions of the vitality of the taxing law itself when sought to be applied to raise obligations and impose liens within the confines of another State. The attempt of Massachusetts here is to impose a contractual liability upon trustees who neither made themselves amenable to, nor sought the protection in any way of, the Commonwealth, and to reach over into Missouri in the attempted impressment of a lien on assets held in Missouri. Massachusetts is attempting to base her right upon revenue laws claimed to have extraterritorial effect.

A controversy arises from the denial by Missouri of the effect of her reciprocity statute. The extent of reciprocal legislation was commented upon in *Farmers Loan & Trust Co.* v. *Minnesota*, 280 U. S. 204, where it was said that thirty-five States had already in some form granted relief against double taxation.

In view of the holding in *Curry* v. *McCanless*, *supra*, and *Graves* v. *Elliott*, *supra*, the need for reciprocal legislation to avoid the evils of double taxation becomes of paramount importance. See, Orr, "Reciprocal Exemptions from Inheritance Taxation," 18 Boston University Law Rev. 39.

Has not Massachusetts an interest in the question whether Missouri legally withholds the exemption granted by her statute?

Enactment of mutual reciprocity laws is assumption of mutual obligations between the States. There was something of the nature of a continuing, although revocable, offer to other States, for the duration of a reciprocity law, to grant exemptions in respect of property of citizens of other States, if the States of their domiciles granted similar exemptions in respect of property of

citizens of the legislating State. This was not mere comity, since it contemplated a *quid pro quo*. The Missouri reciprocity statute was more than a mere exemption law. The nature of Missouri's obligation to Massachusetts is much like the contractual obligation expressed in §§ 85 and 90 of the American Law Institute's Restatement of the Law of Contracts.

The interest of a State such as Massachusetts granting an exemption and claiming reciprocity transcends an interest in the individual benefits to accrue to its own citizens. *Florida* v. *Mellon,* 273 U. S. 12, 16. It is a public interest which Massachusetts has in the reciprocal exemptions upon which its own exemptions are postulated. Missouri should not be permitted, unless she can show just cause, to violate her statute when her citizens are entitled to exemptions in Massachusetts. There would be a constitutional inhibition against the subsequent withdrawal of the benefit conferred at the date of Mrs. Blake's death. *City Bank Farmers' Trust Co.* v. *New York Central R. Co.,* 253 N. Y. 49. Reciprocity, it is believed, furnishes an expedient of accord without violation of the compact clause; for the obligation arising out of reciprocal legislation is not such as requires the consent of Congress. This is true because (1) the obligation, although contractual in nature, is not rested upon manifestation of assent so as to fall within the meaning of "compact" or "agreement" in the constitutional sense; and (2) no interest of the United States is involved. *Virginia* v. *Tennessee,* 148 U. S. 503, 518–519; *Stearns* v. *Minnesota,* 179 U. S. 223, 244–245; *Union Branch R. Co.* v. *East Tennessee & Georgia R. Co.,* 14 Ga. 327, 339, *State* v. *Joslin,* 116 Kans. 615, 618–619.

A controversy arises on the part of each State against the other by reason of the effect of the other's tax upon its public charities.

Controversies between the States and between each of the States and the respondent trustees arise out of the attempts of each State to collect a tax upon the trust property in Missouri. The subject matter is single. With the existence of reciprocity, there can be not more than one tax payable. There being not more than a single liability, damage to the respondent trustees arises from the multiple assertion of claims. The assumption of jurisdiction by this Court would avoid a multiplicity of suits. The existence of controversies capable of being initiated in other courts presupposes the original jurisdiction of this Court.

Mr. Edward H. Miller, with whom *Mr. Roy McKittrick,* Attorney General of Missouri, was on the brief, for the State of Missouri, respondent.

A request for an opinion does not present a case or controversy. *United States* v. *West Virginia,* 295 U. S. 463; *Texas* v. *Interstate Commerce Comm'n,* 258 U. S. 158; *New Jersey* v. *Sargent,* 269 U. S. 328; *Massachusetts* v. *Mellon,* 262 U. S. 447.

Massachusetts is only asking for a declaration of whether it, or Missouri, has the right to levy an inheritance tax, and "this Court may not be called on to give advisory opinions or to pronounce declaratory judgments." *Alabama* v. *Arizona,* 291 U. S. 286, 291; *Ashwander* v. *T. V. A.,* 297 U. S. 288, 324; *Arizona* v. *California,* 283 U. S. 423; *Pennsylvania* v. *West Virginia,* 262 U. S. 553.

The supposed dispute is political and therefore not justiciable. *Fowler* v. *Lindsey,* 3 Dall. 410; *Virginia* v. *West Virginia,* 11 Wall. 39; *Georgia* v. *Stanton,* 6 Wall. 50; *Massachusetts* v. *Mellon, supra; Kansas* v. *Colorado,* 185 U. S. 125; *Rhode Island* v. *Massachusetts,* 12 Pet. 657.

There is no direct conflict of interests between the two States. The trust assets are far more than adequate for the payment of the total taxes claimed by them both. Distinguishing *Texas* v. *Florida,* 306 U. S. 398. The claims of the two are completely independent, are not mutually exclusive in any way, and Missouri has neither done nor threatened any act tending to interfere with the collection by Massachusetts of its asserted tax. *Muskrat* v. *United States,* 219 U. S. 346.

Missouri is not threatening any private or property right of Massachusetts. The Court has declared that only certain types of state rights will be protected from threatened invasion. *Oklahoma* v. *Atchison, T. & S. F. Ry. Co.,* 220 U. S. 277; *Georgia* v. *Stanton,* 6 Wall. 50, 77; *United States* v. *West Virginia,* 295 U. S. 463.

The right to tax is an attribute of general sovereignty, as distinguished from a property right. *McCulloch* v. *Maryland,* 4 Wheat. 316, 428; *Providence Bank* v. *Billings,* 4 Pet. 514, 564; *Case of the State Freight Tax,* 15 Wall. 232, 278; Cooley on Taxation, 3rd ed., p. 7. An invasion by Missouri of the Massachusetts jurisdiction to tax, would not affect a private or property right, and therefore could not present a justiciable controversy. While the property right requirement has been relaxed in water rights cases so as to permit a State to sue as *parens patriae, Missouri* v. *Illinois,* 180 U. S. 208; *Kansas* v. *Colorado,* 185 U. S. 125, such cases present no analogy to the case at bar.

Massachusetts is not the real party in interest. *Oklahoma* v. *Atchison, T. & S. F. Ry. Co.,* 220 U. S. 277; *Wisconsin* v. *Pelican Ins. Co.,* 127 U. S. 265, 287; *Nashville, C. & St. L. Ry. Co.* v. *Wallace,* 288 U. S. 249, 259; *Oklahoma* v. *Gulf, C. & S. F. Ry. Co.,* 220 U. S. 290; *New Hampshire* v. *Louisiana,* 108 U. S. 76; *Kansas* v. *United States,* 204 U. S. 331; *Florida* v. *Anderson,* 91 U. S. 667;

Louisiana v. *Texas*, 176 U. S. 1; *North Dakota* v. *Minnesota*, 263 U. S. 365.

If there is a separate controversy between a State and citizens of another State, necessary parties are absent, whose joinder would oust the jurisdiction. *California* v. *Southern Pacific Co.*, 157 U. S. 228; *Arizona* v. *California*, 298 U. S. 558. See also dissents in *South Dakota* v. *North Carolina*, 192 U. S. 286, 322, and *Pennsylvania* v. *West Virginia*, 262 U. S. 553, 605. The beneficiaries under the trust are the only persons really interested in the issue framed by Massachusetts. Cf. *Texas* v. *Interstate Commerce Comm'n*, 258 U. S. 158, 163; *Minnesota* v. *Northern Securities Co.*, 184 U. S. 199, 246.

The allegations afford no adequate basis for relief according to accepted doctrines of equity jurisprudence. *Texas* v. *Florida*, 306 U. S. 398. Massachusetts was faced with no possible risk of loss from anything that Missouri might do.

Even if the Court has jurisdiction it may decline to exercise it. Courts need not in every case exercise a jurisdiction which they admittedly possess. The statement in *Cohens* v. *Virginia*, 6 Wheat. 264, repeated in *Employers' Liability Cases*, 223 U. S. 1, 58; *Hyde* v. *Stone*, 20 How. 170; *Chicot County* v. *Sherwood*, 148 U. S. 529; and *McClellan* v. *Carland*, 217 U. S. 268, that a court can not decline to exercise its jurisdiction, is subject to exceptions. *Canada Malting Co.* v. *Paterson Steamships*, 285 U. S. 413; *Rogers* v. *Guaranty Trust Co.*, 288 U. S. 123; *Pennsylvania* v. *Williams*, 294 U. S. 176. Cf., *Douglas* v. *New York, N. H., & H. R. Co.*, 279 U. S. 377.

The constitutional provision conferring jurisdiction in controversies between States, and between States and citizens of other States, is not mandatory. If the language of the first Judiciary Act can properly be used as a contemporaneous interpretation of the constitutional

provisions, *Ames* v. *Kansas,* 111 U. S. 449, it would seem that "all" controversies where a State is a party, the language of the statute, would have required the reading of the word "all" into the constitutional provision of clause 1 dealing with controversies between States, especially since clause 2 apparently distributes to the Supreme Court jurisdiction in "all" cases in which a State is a party. However, the Court has declined to accept that interpretation, has said that the omission in clause 1 of the word "all" was apparently deliberate, and intended to be a contrast between the classes of cases in clause 1 which are preceded by the word "all," and thus that the judicial power does not extend to all controversies to which the United States is a party, or to all controversies between a State and citizens of another State, but rather only to certain types of those controversies. *Williams* v. *United States,* 289 U. S. 553; *Oklahoma* v. *Gulf, C. & S. F. Ry. Co.,* 220 U. S. 290. And it has read into the constitutional language certain cases not even mentioned. The Court has approved Mr. Justice Iredell's dissent in *Chisholm* v. *Georgia,* and has declared that the doctrine of the implied immunity of a sovereign from suit must be read into the constitutional language, and that its literal construction is inadmissible. *Williams* v. *United States, supra; Hans* v. *Louisiana,* 134 U. S. 1. The Court has also read into the constitutional provision a prohibition against suits by a foreign State against a State. *Principality of Monaco* v. *Mississippi,* 292 U. S. 313, 322; *Oklahoma* v. *Gulf, C. & S. F. Ry. Co.,* 200 U. S. 290. In fact, in *Williams* v. *United States, supra,* the Court said that the phrase "Controversies to which the United States shall be a Party" in Article III, § 2, clause 1, which it placed upon precisely the same footing as the clause "Controversies between two or more States," must be construed in accordance with the practical construction put upon it by the first Judiciary Act, as though it

read, "controversies to which the United States shall be a party plaintiff or petitioner." 289 U. S. 577. The same principle has been given an even broader application. *Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 265, 289; *Missouri* v. *Illinois*, 180 U. S. 208.

It is interesting to note that the Court has grafted a further exception upon the exception that suits which were not justiciable prior to the Constitution were not made justiciable by the Constitution. *Hans* v. *Louisiana, supra.* It is also interesting to observe that the interpretation of the Constitution and the Judiciary Act as differentiating, although the language itself suggests no such differentiation, between suits by a State or the United States, and suits against a State or the United States, was arrived at even although in the very language of the Judiciary Act, an express distinction is made between suits by ambassadors and other foreign representatives, and suits against them.

If the language of the Constitution and the Judiciary Act were taken literally in connection with controversies between, for example, a State and citizens of other States, it would appear to authorize the Supreme Court to take jurisdiction in every case where a State and citizens of other States are adversary parties. The Court has, however, interpreted this language so that the grant of power is only considered as extending to justiciable cases or controversies, of a civil nature, in which a State as plaintiff or petitioner sues only citizens of other States. Thus if the Court can read into the language of the Constitution certain exceptions which are perhaps not directly suggested by its terms, but which are derived from postulates beyond the confines of the Constitution, it would appear to be at liberty to decline to exercise jurisdiction in this case, on grounds equally compelling, and on postulates equally beyond the confines of the constitutional and statutory language. Cf., the dissenting opinion of

Mr. Chief Justice Fuller in *United States* v. *Texas,* 143 U. S. 621, 648.

The Court should decline to exercise jurisdiction in this case. This proceeding is not of the kind for which the original jurisdiction of this Court was designed. There are other entirely adequate remedies available to the interested parties. There are other remedies in other courts which are entirely adequate to dispose of any possible differences between the parties interested in this case. Massachusetts should be able to bring a suit against the trustees for the collection of its taxes, in either a Missouri state court or in a federal district court in Missouri, and such a suit would be of a civil nature and would present a justiciable case or controversy. There is no question about the remedies available for a testing of the validity of the Missouri tax. The trustees could sue to enjoin the collection of the Missouri tax on the ground that it is unconstitutional as applied to them, *Ex parte Young,* 209 U. S. 123; or could bring an action under the Missouri Declaratory Judgment Act, Laws of Missouri 1935, pp. 218–220. And the Missouri inheritance tax laws, § 598, R. S. Mo., 1929, permit persons interested in their liability for an inheritance tax to bring suit against the State to quiet title, to which suit the State expressly consents.

Mr. Chief Justice Hughes delivered the opinion of the Court.

The Commonwealth of Massachusetts asks leave to file a bill of complaint against the State of Missouri and certain citizens of that State. On return to the order to show cause why leave should not be granted, the respondents, while contesting the claims of Massachusetts, stated that they had no cause to show. The Court set the motion for hearing upon the question whether the Court has jurisdiction to entertain the suit. The com-

plainant and the individual respondents contend that the Court has jurisdiction and the State of Missouri now presents the contrary view.

The argument for jurisdiction rests upon two grounds, (1) that there is a controversy between two States, and (2) that there is a controversy between a State and citizens of another State. Constitution, Article III, § 2, paragraphs 1 and 2.

The proposed bill of complaint alleges in substance that Madge Barney Blake, domiciled in Massachusetts, died in 1935 leaving an estate in that State of $12,646.02, which has there been administered, and that this estate will be exhausted by costs of administration and federal taxes; that the decedent, while domiciled in Massachusetts, created three trusts of securities of the value (at the time of death) of $1,850,789.77, the trustees being residents of Missouri where the securities are held; that in two of these trusts, embracing the greater part of the securities, the settlor had reserved the right of revocation; that both Massachusetts and Missouri have inheritance tax statutes subjecting to taxation property passing by deed, grant or gift made or intended to take effect in possession or enjoyment after the death of the donor; that the Massachusetts statute imposes the tax upon intangibles only when owned by inhabitants of that State; that the Missouri statute exempts from the tax intangibles owned by non-residents who reside in States extending reciprocal provisions to residents of Missouri; that in this instance both States are claiming the exclusive right to impose inheritance taxes upon the trust estates; that Missouri intends to exercise its jurisdiction over the trustees and the property to the exclusion of Massachusetts; that Massachusetts has taken the action required by its statutes to determine the amount of the tax, and to certify it to the persons by whom it is payable, and that there is now due to Massachusetts from the respondent

trustees $137,000, if all the trust estates are taxable, and $127,000 if only the property under the two revocable trusts is taxable; and that the tax cannot be collected from any persons or property in Massachusetts.

Alleging the absence of adequate remedy save in this Court sitting as a court in equity, the complainant prays that the Court may adjudge whether Massachusetts or Missouri has "the jurisdiction and lawful right to impose transfer, succession or inheritance taxes" in respect of the several transfers described and to determine that question in favor of Massachusetts. There is also a general prayer for other relief by injunction or otherwise as the Court may deem expedient.

First.—The proposed bill of complaint does not present a justiciable controversy between the States. To constitute such a controversy, it must appear that the complaining State has suffered a wrong through the action of the other State, furnishing ground for judicial redress, or is asserting a right against the other State which is susceptible of judicial enforcement according to the accepted principles of the common law or equity systems of jurisprudence. *Florida* v. *Mellon,* 273 U. S. 12, 16, 17; *Texas* v. *Florida,* 306 U. S. 398, 405. Missouri, in claiming a right to recover taxes from the respondent trustees, or in taking proceedings for collection, is not injuring Massachusetts. By the allegations, the property held in Missouri is amply sufficient to answer the claims of both States and recovery by either does not impair the exercise of any right the other may have. It is not shown that there is danger of the depletion of a fund or estate at the expense of the complainant's interest. It is not shown that the tax claims of the two States are mutually exclusive. On the contrary, the validity of each claim is wholly independent of that of the other and, in the light of our recent decisions, may constitutionally be pressed by each State without conflict in point of

fact or law with the decision of the other. *Curry* v. *McCanless,* 307 U. S. 357; *Graves* v. *Elliott,* 307 U. S. 383. The question is thus a different one from that presented in *Texas* v. *Florida, supra,* where the controlling consideration was that by the law of the several States concerned only a single tax could be laid by a single State, that of the domicile. This was sufficient basis for invoking the equity jurisdiction of the Court, where it also appeared that there was danger that through successful prosecution of the claims of the several States in independent suits enough of the estate would be absorbed to deprive some State of its lawful tax. *Texas* v. *Florida, supra,* 405, 406, 408, 410.

Massachusetts urges that a controversy has arisen over the enforcement of the reciprocal provisions of the tax statutes of the two States. It is said that Missouri has enacted reciprocal legislation under which there is exempted from taxation the transfer of intangibles where the transferor at the time of death was a resident of a State which at that time did not impose a transfer or death tax in respect of the intangible property of residents of other States or if the laws of the State of residence contained a reciprocal exemption provision (Missouri Rev. Stat. 1929, c. 1, art. 21, § 576); and that Massachusetts since 1927 (St. 1927, c. 156) has granted complete exemption from the inheritance tax to intangible property not belonging to its inhabitants. Mass. General Laws (Ter. Ed.) c. 65, § 1. The argument is that Massachusetts and its residents are entitled to the immunity offered by the Missouri statute.

But, apart from the fact that there is no agreement or compact between the States having constitutional sanction (Const. Art. 1, § 10, par. 3), the enactment by Missouri of the so-called reciprocal legislation cannot be regarded as conferring upon Massachusetts any contractual right. Each State has enacted its legislation ac-

cording to its conception of its own interests. Each State has the unfettered right at any time to repeal its legislation. Each State is competent to construe and apply its legislation in the cases that arise within its jurisdiction. If it be assumed that the statutes of the two States have been enacted with a view to reciprocity in operation, nothing is shown which can be taken to alter their essential character as mere legislation and to create an obligation which either State is entitled to enforce as against the other in a court of justice.

The suggestion that residents of Massachusetts are entitled to the immunity offered by the Missouri statute is unavailing, as Massachusetts may not invoke our jurisdiction for the benefit of such individuals. *Oklahoma* v. *Atchison, T. & S. F. Ry. Co.*, 220 U. S. 277, 286; *Oklahoma* v. *Cook*, 304 U. S. 387, 394.

Nor does the nature of the suit as one to obtain a declaratory judgment aid the complainant. To support jurisdiction to give such relief, there must still be a controversy in the constitutional sense (*Aetna Life Insurance Co.* v. *Haworth*, 300 U. S. 227, 240, 241) and as between the two States there is no such controversy here.

Second.—Complainant urges that jurisdiction may be sustained in the view that the proposed bill of complaint presents a controversy between Massachusetts and citizens of Missouri. The bill is not aptly framed so as to present such a controversy independently of a controversy between the States. The bill expressly states the issues presented as being (a) whether Massachusetts or Missouri has exclusive jurisdiction over the transfers in trust so as to have the taxing power, and (b) secondarily, whether the State having such jurisdiction can constitutionally reach one of the trusts in which the settlor reserved no right of revocation. And the specific relief sought is that the Court may determine which State has the jurisdiction to tax and may award that

jurisdiction to Massachusetts as against Missouri. If the gravamen of the proposed bill is deemed to be an assertion of a controversy between the States, jurisdiction to entertain the bill cannot be supported in the absence of the showing of such a controversy. Missouri cannot be brought into court by the expedient of making its citizens parties to a suit otherwise not maintainable against the State.

With respect to the second ground of invoking jurisdiction, as an independent ground, we are virtually asked to disregard the stated objective of the proposed bill, to treat it as amended so as to expunge claims against Missouri and to confine it to claims against the trustees; to consider the bill as no longer asking a declaratory judgment as to which State has power to tax, as not seeking relief in this Court "sitting as a court of equity," but, in the light of the general prayer for other relief, as presenting a simple action against the trustees to recover the amount of the tax claimed to be due Massachusetts irrespective of any claim of Missouri.

If it be possible to consider the proposed bill as thus stripped of its abortive allegations against Missouri and as presenting a cause of action so distinct from that primarily relied upon, still the invocation of our jurisdiction must fail. In the exercise of our original jurisdiction so as truly to fulfill the constitutional purpose we not only must look to the nature of the interest of the complaining State—the essential quality of the right asserted—but we must also inquire whether recourse to that jurisdiction in an action by a State merely to recover money alleged to be due from citizens of other States is necessary for the State's protection. In *Oklahoma* v. *Cook, supra,* we called attention to the enormous burden which would be imposed upon this Court if by taking title to assets of insolvent state institutions, including claims against citizens of other States, a State could demand access to the origi-

nal jurisdiction of this Court to enforce such claims. To open this Court to actions by States to recover taxes claimed to be payable by citizens of other States, in the absence of facts showing the necessity for such intervention, would be to assume a burden which the grant of original jurisdiction cannot be regarded as compelling this Court to assume and which might seriously interfere with the discharge by this Court of its duty in deciding the cases and controversies appropriately brought before it. We have observed that the broad statement that a court having jurisdiction must exercise it (see *Cohens* v. *Virginia,* 6 Wheat. 264, 404) is not universally true but has been qualified in certain cases where the federal courts may, in their discretion, properly withhold the exercise of the jurisdiction conferred upon them where there is no want of another suitable forum. *Canada Malting Co.* v. *Paterson Co.,* 285 U. S. 413, 422; *Rogers* v. *Guaranty Trust Co.,* 288 U. S. 123, 130, 131. Grounds for justifying such a qualification have been found in "considerations of convenience, efficiency and justice" applicable to particular classes of cases. *Rogers* v. *Guaranty Trust Co., supra.* Reasons not less cogent point to the need of the exercise of a sound discretion in order to protect this Court from an abuse of the opportunity to resort to its original jurisdiction in the enforcement by States of claims against citizens of other States.

In this instance it does not appear that Massachusetts is without a proper and adequate remedy. Clause 2 of § 2 of Article III merely distributes the jurisdiction conferred by clause one. *Louisiana* v. *Texas,* 176 U. S. 1, 16; *Monaco* v. *Mississippi,* 292 U. S. 313, 321. The original jurisdiction of this Court, in cases where a State is a party, "refers to those cases in which, according to the grant of power made in the preceding clause, jurisdiction might be exercised in consequence of the character of the party, and an original suit might be instituted in any of

the federal Courts; not to those cases in which an original suit might not be instituted in a federal Court." *Cohens* v. *Virginia, supra,* pp. 398, 399. With respect to the character of the claim now urged, we are not advised that Missouri would close its courts to a civil action brought by Massachusetts to recover the tax alleged to be due from the trustees. The Attorney General of Missouri at this bar asserts the contrary. He says that "it would seem that Massachusetts should be able to bring a suit against the trustees for the collection of its taxes in either a Missouri state court or in a federal district court in Missouri" and that "such a suit would be of a civil nature and would present a justiciable case or controversy." We have said that the objection that the courts in one State will not entertain a suit to recover taxes due to another or upon a judgment for such taxes, is not rightly addressed to any want of judicial power in courts which are authorized to entertain civil suits at law. It goes "not to the jurisdiction but to the merits," and raises a question which district courts are competent to decide. *Milwaukee County* v. *M. E. White Co.,* 296 U. S. 268, 272.

The motion for leave to file the proposed bill of complaint is denied.

Motion denied.

MR. JUSTICE BUTLER took no part in the consideration and decision of this case.